6

Two Reputed Allies

Reconciling Climate Justice and Litigation in the Global South

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6.1 INTRODUCTION

Imagine a Bolivian farmer whose livelihood depends on the continuing flow of a river, without which he cannot water his crops. Due to climate change, glaciers that used to feed local rivers are retreating, leading to a substantial reduction in water availability. After a couple of years, the farmer sees in the local newspaper that a fellow citizen, a concerned industrial farmer, won a constitutional lawsuit against the state of Bolivia for failing to meet its state duty to mitigate CO_2 emissions. The court ordered the state to stop producing natural gas as it pollutes the atmosphere and exacerbates the climate crisis. Suddenly, this first lawsuit creates a snowball effect, and people of all ages start to inundate the already cramped and overburdened domestic courts with similar lawsuits. These lawsuits offer a mosaic of legal arguments and are geographically diverse, demonstrating in stark terms how people's homes are almost uninhabitable due to the effects of the climate crisis.

As a result, the state decides to raise taxes, search for new sources of finance to secure public debt, and intensify mining activities to meet its increasing judicial obligations. Does this approach comport with the tenets of climate justice? Is it fair that a country that only marginally contributed to the climate crisis now has to shoulder it? What options, if any, do courts in developing countries have to provide remedies that also tackle climate justice issues?

This chapter will attempt to address these questions.

6.2 UNDERSTANDING CLIMATE LITIGATION IN THE GLOBAL SOUTH

As states' efforts to curb greenhouse gas (GHG) emissions continue to fall short relative to the reductions needed to avoid severe climate

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risks,[1] different types of actors are increasingly filing lawsuits before international, regional, and domestic judicial bodies to induce the creation, transformation, and implementation of climate policies.[2] This area of litigation, which deals with "a wide range of claims with differing degrees of connection to climate change and related issues, such as energy transition, renewable energy use, adaptation policy or climate damage," is often described as climate litigation.[3]

The Global South is increasingly the subject of burgeoning scholarly attention as scholars seek to understand the development of climate litigation. Recent studies have offered different approaches to understanding how judicial actors invoke, apply, and shape the law in the Global South.[4] Jackie Peel and Jolene Lin's chapter on modes of climate litigation in the Global South (Chapter 9), Arpitha Kodiveri's chapter on Indian climate litigation (Chapter 20), and Waqqas Mir's chapter on Pakistani climate litigation (Chapter 22) in this volume are such examples. This recent appetite for a more geographically expansive understanding of climate litigation is arguably a reaction to the relatively meagre number of articles discussing this phenomenon. Setzer and Vanhala's paper – described as the "first to systematically review key literature on climate change litigation" – draws upon 130 articles written between the years 2000 and 2018 to conclude that only 5 percent of the selected papers have a specific focus on issues related to litigation in the Global South.[5]

[1] See "The Emissions Gap Report 2019" (2019) United Nations Environment Programme, <https://www.unenvironment.org/resources/emissions-gap-report-2019>.

[2] See Sandrine Maljean-Dubois, "Climate Change Litigation," in *Max Planck Encyclopaedia of Public International Law* (Oxford: Public International Law, 2018).

[3] Jacqueline Peel and Hari M. Osofsky, "Litigation as a Climate Regulatory Tool," in Christina Voigt (ed.), *International Judicial Practice on the Environment* (Cambridge: Cambridge University Press, 2019), p. 314.

[4] See Jacqueline Peel and Jolene Lin, "Transnational Climate Litigation: The Contribution of the Global South" (2019) 113 *American Journal of International Law* 679; see also Joana Setzer and Lisa Benjamin, "Climate Litigation in the Global South: Constraints and Innovations" (2019) *Transnational Environmental Law* 1; see also Joana Setzer and Lisa Benjamin, "Climate Change Litigation in the Global South: Filling in Gaps" (2020) 114 *AJIL Unbound* 56; see also César Rodríguez-Garavito, "Human Rights: The Global South's Route to Climate Litigation" (2020) 114 *American Journal of International Law* 1; see also Hari M. Osofsky, "The Geography of Emerging Global South Climate Change Litigation" (2020) 114 *AJIL Unbound* 61; see also Juan Auz, "Global South Climate Litigation versus Climate Justice: Duty of International Cooperation as a Remedy?," Völkerrechtsblog, April 28, 2020 <https://voelkerrechtsblog.org/global-south-climate-litigation-versus-climate-justice-duty-of-international-cooperation-as-a-remedy/>.

[5] Joana Setzer and Lisa C. Vanhala, "Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance" (2019) 10 *Wiley Interdisciplinary Reviews: Climate Change* 1, 4.

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In a commendable attempt to address this scholarly vacuum, Peel and Lin's article addresses the contributions of the Global South to transnational climate litigation by identifying common features within the "Global South's docket" of climate lawsuits.[6] They found that, quite frequently, cases in the Global South place climate change issues at the "periphery" rather than at the center, a strategy that may be linked to the pursuit of more general environmental concerns that can tangentially embed climate change mitigation.[7] They hypothesize that this approach is the result of the absence, embryonic stage, or lack of implementation of climate law frameworks, thereby pushing climate cases to draw on other laws that apply only indirectly to climate change.[8]

Another noticeable feature of climate cases in the Global South, according to the foregoing literature, is the consistent presence of constitutional and human rights arguments in both the petitions and the judicial decisions.[9] This is the result of the significant number of countries in the Global South that have enabling constitutional arrangements for human rights protection and associated institutions to fulfill those rights.[10] In that regard, these legal opportunity structures continue to be profoundly relevant for human rights victims, who have historically utilized them to advance their agendas through advocacy and litigation before domestic and regional human rights bodies.[11] Human rights and constitutional and environmental law will likely continue to play a role in a context where climate-induced impacts exacerbate existing vulnerabilities stemming from structural inequalities.[12]

Courts in countries such as Pakistan, Colombia, and South Africa have already yielded landmark decisions that elaborate on the contention that state[13]

[6] Peel and Lin, "Transnational Climate Litigation: The Contribution of the Global South," above note 4, at 679.

[7] See ibid.

[8] See ibid.

[9] See ibid. at 705.

[10] See Setzer and Benjamin, "Climate Litigation in the Global South," above note 4, at 13.

[11] See ibid.

[12] See Christopher P. O. Reyer et al., "Climate Change Impacts in Latin America and the Caribbean and Their Implications for Development" (2017) 17 *Regional Environmental Change* 1601, 1613.

[13] See *Ashgar Leghari* v. *Pakistan*, (2015) Lahore High Court W.P. No. 25501/2015; see also Paola Andrea Acosta Alvarado and Daniel Rivas-Ramírez, "A Milestone in Environmental and Future Generations' Rights Protection: Recent Legal Developments before the Colombian Supreme Court" (2018) 30 *Journal of Environmental Law* 519; see also Marjoné van der Bank and Jaco Karsten, "Climate Change and South Africa: A Critical Analysis of the *Earthlife Africa Johannesburg and Another* v. *Minister of Energy and Others* 65662/16 (2017) Case and the Drive for Concrete Climate Practices" (2020) 13 *Air, Soil and Water Research* 1.

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failure to implement mitigation or adaptation policies sufficient to avoid or reduce climate-related harm violates fundamental rights enshrined in constitutions and international human rights treaties.[14] More generally, climate litigation in the Global South tends to involve the implementation and enforcement of climate-related policies, combined with the application and enforcement of existing and well-established non-climate legislation and jurisprudence.[15]

In many of these cases, courts not only accepted the rights-based arguments of the plaintiffs, they also designed and provided remedies, including injunctions against the defendant state and specific measures aimed at ceasing or preventing the harm at issue.[16] In cases in Colombia and Pakistan, the defendant states were compelled to create specialized boards, composed of government officials in liaison with civil society organizations, to enforce extant policies through specific action plans targeting climate change concerns.[17]

6.3 PROBLEMATIZING REMEDIES IN GLOBAL SOUTH CLIMATE CASES

Though Global South courts might appear to provide comprehensive, proportionate, and context-specific remedies in climate cases, these cases nevertheless reveal a tension between climate justice and litigation outcomes. In short, the problem is that when Global South litigators win cases based on human rights and constitutional law against defendant states, those states then need to offer remedies despite the fact that they did not engender nor substantially further the global climate crisis as major global GHG emitters.[18] On the contrary, these states are disproportionally impacted by it.[19] Moreover, these same countries often have saturated judicial systems, which often do not

[14] See Annalisa Savaresi and Juan Auz, "Climate Change Litigation and Human Rights: Pushing the Boundaries" (2019) 9 *Climate Law* 244.

[15] See Peel and Lin, "Transnational Climate Litigation," above note 4, at 725.

[16] See *Greenpeace et al* v. *Mexico* [2020] Juez Segundo de Distrito en Materia Administrativa Especializado en Competencia Económica, Radiodifusión y Telecomunicaciones 104/2020.

[17] See Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil, abril 5, 2018, M.P.: L.A. Tolosa Villabona, Expediente 11001-22-03-000-2018-00319-01 (Colom.); *Ashgar Leghari* v. *Federation of Pakistan*, above note 13.

[18] See M. J. Mace and Roda Verheyen, "Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement" (2016) 25 *Review of European, Comparative & International Environmental Law* 197, 212.

[19] See Glenn Althor et al., "Global Mismatch between Greenhouse Gas Emissions and the Burden of Climate Change" (2016) 6 *Scientific Reports* 1.

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possess the structural capabilities to implement ambitious and comprehensive climate-related remedies.[20]

This remedy conundrum is likely to resurface before international and regional human rights bodies as well, when they decide their first climate case based on human rights law. Granting reparations for climate-related harms is a currently unresolved issue for these bodies, but one that soon might come to fruition. The surge of domestic climate cases and recent jurisprudential developments that address the linkages between environmental harm, climate change, and human rights are becoming parameters that international adjudicative bodies use to inform their decisions. This trend may not only clarify questions related to state responsibility for environmental damage amounting to wrongful acts under international human rights law,[21] it may also raise questions about whether state responsibility should be calibrated when the defendant state has contributed the least to a multicausal source of harm, like a developing nation in the context of climate change.

The latest decisions by the UN Human Rights Committee are potential harbingers of the harmonization of international law and the calibration of state responsibility. In the *Teitiota* v. *New Zealand* case, the applicant did not convince the treaty body that climate change poses an "imminent" risk amounting to a "personal" violation of the right to life. However, the Committee did acknowledge for the first time in an individual complaint that "climate change constitutes extremely serious threats to the ability of both present and future generations to enjoy the right to life."[22] To reach its decision, the Committee cited relevant and similar claims from the Inter-American Court of Human Rights and the African Commission on Human and People's Rights.[23] This case opened a window of opportunity for future victims of climate change from developing countries, whose chances of success in litigation against a developed country for failing to act on climate change are increasing.

In *Portillo Cáceres* v. *Paraguay*, the Committee stressed that states should address environmental pollution as one of the general conditions in society

[20] See Antonio Herman Benjamin and Nicholas Bryner, "Brazil," in Emma Lees and Jorge E. Viñuales (eds.), *The Oxford Handbook of Comparative Environmental Law* (Oxford: Oxford University Press, 2019), p. 98.

[21] See Margaretha Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law* (Oxford: Hart, 2019), p. 88.

[22] *Teitiota* v. *New Zealand*, Views adopted by the Committee under article 5(4) of the Optional Protocol, UN Human Rights Committee, Annex 2, at ¶4, UN Doc. CCPR/C/127/D/2728/2016 (2020).

[23] See ibid. ¶10.

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that may give rise to threats to the right to life.[24] In that vein, the Committee deemed that states are responsible for the violation of the right to life if environmental harm is a "reasonably foreseeable threat" to the right. The Committee enumerated manifold instances in which this threat manifests, including river pollution and previous government reports recognizing the danger agrochemical fumigation poses to human health.[25] Ultimately, the Committee ordered full reparations for the victims, including adequate compensation and the prevention of similar violations in the future.[26] In contrast to *Teitiota*, this case did pass the "reasonably foreseeable threat" test because the evidence was overwhelming, which paves the way for applicants from developing countries to succeed in suing their own states before the Committee on climate change grounds if the test requirements are met.

Eventually, if a climate case follows the steps of *Portillo Cáceres* v. *Paraguay*, and it succeeds before an international human rights body, it will most likely follow the seminal *restitutio in integrum* standard set forth by the Inter-American Court of Human Rights in *Velasquez Rodriguez* v. *Honduras* for indemnification for pecuniary and non-pecuniary damages.[27] The conundrum with this is that these judicial and quasi-judicial bodies might order developing states like Paraguay, which contribute the least to climate change, to compensate victims, the cost of which will ultimately be borne by taxpayers – people who will also suffer the impacts of the climate crisis within the same state.

With this, I am not suggesting that the international community should exempt developing or vulnerable countries from their human rights duties; I am, however, urging consideration of some legitimate climate justice arguments and the problem they raise for remedies in the context of Global South climate litigation. The emerging scientific consensus in the late 1980s around the role of GHG emissions in altering the global climate system raised complex questions of responsibility and justice, including with regard to the huge variations in the contribution and vulnerability to climate change among and within nations. This, in turn, generated discussions on the mismatch

[24] See *Portillo Caceres* v. *Paraguay*, Views adopted by the Committee under article 5(4) of the Optional Protocol, UN Human Rights Committee, ¶7.3, UN Doc. CCPR/C/126/D/2751/2016 (2019).
[25] See ibid. ¶7.5.
[26] See ibid. ¶9.
[27] See *Velásquez-Rodríguez* v. *Honduras*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 04 (July 29, 1988).

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between the modest contribution of developing countries to the crisis and the onerous burden of the impacts they must endure, therefore suggesting that industrialized countries are the polluters who must pay for the global environmental damage or at least support those who did not significantly benefit from a carbon-intensive economy.[28]

In light of the above, remedies ordered by domestic courts and international human rights bodies might benefit from addressing the complex and multilayered nature of the climate crisis and its accompanying questions of justice. Some hints of how these questions operate in practice can be found in the international climate regime, which captures a panoply of ethical principles that can shed light on the justice puzzle or at least serve as an orienting reference point. These ethical principles include, for example, the principle of "common but differentiated responsibility" (CBDR) and the values underpinning the inclusion of "loss and damage" mechanisms to compensate developing countries in the event of irreversible climate impacts.[29] All of these are potential instruments for Global South adjudicators to help them situate localized impacts within a multi-scalar chain of climate change responsibility.

Furthermore, it should be noted that, despite the role that litigation has played as a tool for political change, countries in the Global South are already reducing their heavy reliance on a fossil fuel economy and starting decarbonization programs as a way to reduce their GHG emissions and acquire new forms of energy sovereignty.[30] This suggests that these countries question their carbon-intensive mode of production because of the likelihood of stranded assets and the human rights and environmental impacts that local communities have historically endured.[31] This situation may lead climate litigation to be reframed as a way to accelerate this pathway toward decarbonization while guaranteeing that the deployment of renewable energy projects respect human rights.

[28] See Philip Coventry and Chukwumerije Okereke, "Climate Change and Environmental Justice," in Ryan Holifield et al. (eds.), *The Routledge Handbook of Environmental Justice* (Oxford: Routledge, 2017), p. 363.

[29] Ibid. at 369.

[30] See Inter-American Development Bank and Deep Decarbonization Pathways for Latin America and the Caribbean, "Getting to Net-Zero Emissions: Lessons from Latin America and the Caribbean" (2019) Inter-American Development Bank 14, 28.

[31] See Kyra Bos and Joyeeta Gupta, "Stranded Assets and Stranded Resources: Implications for Climate Change Mitigation and Global Sustainable Development" (2019) 56 *Energy Research & Social Science* 1.

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6.4 ADJUDICATIVE BODIES: ORDERING STATES TO ENGAGE IN INTERNATIONAL COOPERATION?

Those judicial and quasi-judicial bodies, at both the national and international level, that have to determine whether the violation of a right was sufficiently evident to generate responsibility need to engage in and apply interpretive methods aimed at promoting the effective application (*effet utile*) of the law.[32] One of these interpretive methods involves looking at the law as a teleological undertaking, whereby judges can instill an updated meaning to a specific state duty by connecting the law's provisions and principles with the broader societal context and subsequent practice. This thus allows judges to cautiously fill in gaps in the normative realm.[33]

In employing a teleological or purposive method of interpretation, domestic and human rights courts can reinvigorate states' international obligations to cooperate with each other as a way of ensuring non-repetition of harm.[34] Recognition that the main structural obstacle to compliance by developing countries with a potential climate-related judgment is the lack of expertise and resources – both financial and technical – serves as the main rationale for this approach. In other words, courts could anticipate a potential non-compliance scenario due to systemic barriers and thus resort to interpretive techniques to design context-specific remedies.

More concretely, courts could establish obligations requiring states to do their best to cooperate with other states or multilateral institutions to protect the rights of their citizens from climate-related harm.[35] Ultimately, the formulation of a remedy that integrates a duty to cooperate internationally, indirectly addresses climate justice. Indeed, the defendant state could be mandated to perform its best when it comes to finding international assistance and cooperation, particularly with those states that pollute the most or with financial institutions that might provide appropriate funding.

[32] See Lucas Lixinski, "Treaty Interpretation by the Inter-American Court of Human Rights: Expansionism at the Service of the Unity of International Law" (2010) 21 *European Journal of International Law* 585, 589.

[33] See Odile Ammann, *Domestic Courts and the Interpretation of International Law: Methods and Reasoning Based on the Swiss Example* (Leiden: Brill Nijhoff, 2020).

[34] See Dinah Shelton, *Remedies in International Human Rights Law*, 3rd ed. (Oxford: Oxford University Press, 2015), p. 397.

[35] See Benoit Mayer, "Obligations of Conduct in the International Law on Climate Change: A Defence" (2018) 27 *Review of European, Comparative & International Environmental Law* 130, 140.

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Article 1(1) and (3) of the United Nations Charter[36] and Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) offer essential doctrinal direction in this regard. The ICESCR, more specifically, lays out the duty of states "to take steps ... through international assistance and co-operation, especially economic and technical ... with the view to achieving progressively the full realization of ... rights."[37] In connection with this, the ICESCR's treaty body specified in its General Comment No. 3 that international cooperation is an obligation of all states,[38] an approach that resonates with Article 4 of the United Nations Framework Convention on Climate Change (UNFCCC) and Article 12 of the Paris Agreement.[39]

Moreover, adjudicative bodies could invoke these sources of international law as persuasive authority to interpret and inform the remedies they issue. In doing so, they could communicate to states that while they are not exclusively responsible for the drivers of climate change that ultimately lead to human rights violations, they nonetheless have obligations to take all appropriate measures to bridge the resource gap. This entails proactively pursuing cooperation to redress violations and ensure non-repetition. Additionally, judges could also draw from the reporting obligations under Article 13 (10) of the Paris Agreement, particularly with respect to providing information on the support needed for finance, technology transfer, and capacity building.

Notably, UN treaty bodies are already framing the obligation to cooperate in the context of climate change as a human rights duty. For instance, in 2018, the Committee on the Elimination of Discrimination against Women (CEDAW) stressed in its General Recommendation No. 37 on gender in the context of climate change that an "adequate and effective allocation of financial and technical resources for ... climate change prevention, mitigation and adaptation must be ensured both through national budgets and by

[36] See United Nations, *Charter of the United Nations and Statute of the International Court of Justice* (New York: United Nations, 2015).

[37] United Nations, 'Official Documents United Nations Human Rights Covenants: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Optional Protocol to the International Covenant on Civil and Political Rights' (1967) 61 *American Journal of International Law* 861.

[38] See UN Committee on Economic, Social and Cultural Rights, CESCR General Comment No. 3: The Nature of States Parties' Obligations, UN Doc. E/1991/23, at ¶13 (1990).

[39] See United Nations Framework Convention on Climate Change, Rio de Janeiro, May 9, 1992, 1771 UNTS 107; see also Paris Agreement to the United Nations Framework Convention on Climate Change, Paris, Dec. 12, 2015, TIAS No. 16-1104.

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means of international cooperation."[40] The same year, CEDAW and the Committee on the Rights of the Child (CRC) published their Concluding Observation on the report of the Marshall Islands and Palau respectively, which nicely capture the very spirit of the envisaged formulation for future remedies. CEDAW recommended that the state "seek international cooperation and assistance, including climate change financing, from other countries, in particular the United States, whose extraterritorial nuclear testing activities have exacerbated the adverse effects of climate change and natural disasters in the State party."[41] The CRC used a similar approach.[42]

As trite and redundant as it might seem, it is important to emphasize that the boldness of courts in interpreting state duties and designing remedies cannot wholly replace multilevel climate governance. Undeniably, turning the duty to cooperate into a judicial remedy might reproduce the very same limitations that multilateral negotiations face when fleshing out some of the principles of the climate regime. For instance, contentious cases could mirror, at a smaller scale, how states at multilateral climate negotiations often cannot agree on the details of certain provisions of principles, such as the principle of common but differentiated responsibilities.[43] However, when courts impose a specific remedy to cooperate, the scope of diplomatic maneuver for states narrows, and what otherwise is a nebulous obligation to cooperate has the potential to become a concrete one, in particular, with judicial follow-up and the imposition of deadlines. Additionally, this model, whereby courts adopt and interpret international cooperation to guide their decisions, may also be applied in Global North jurisdictions, especially if victims from the Global South pursue extraterritorial climate litigation and demand financial contributions, technology transfer, and capacity building.

Another potential drawback is the foreseeable allegation that courts may be acting beyond their mandate, thus encroaching on the role of other branches of government with long-standing legitimacy and authority in matters of cooperation. Nevertheless, most of the time, courts do have the authority to

[40] Committee on the Elimination of Discrimination Against Women, General Recommendation No. 37 on Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change, UN Doc. CEDAW/C/GC/37, at ¶45 (2018).

[41] Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Initial to Third Periodic Reports of the Marshall Islands, UN Doc. CEDAW/C/MHL/CO/1-3, ¶45 (2018).

[42] See Committee on the Rights of the Child, Concluding Observations on the Second Periodic Report of Palau, UN Doc. CRC/C/PLW/CO/2, at ¶49 (2018).

[43] See Benoît Mayer, *The International Law on Climate Change* (Cambridge: Cambridge University Press, 2018), p. 101; see also Daniel Bodansky et al., *International Climate Change Law* (Oxford: Oxford University Press, 2017), p. 128.

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interpret the law to set minimum obligations with an ample margin of discretion that avoids the *trias politica*, an argument that has been immortalized in the *Urgenda* v. *Netherlands* case.[44] However, assuming that the separation of powers argument hinders a more comprehensive judgment, the judge could order the continuation of the carbon-intensive activity under the condition that high levels of pollution are reduced and compensation is paid for the damage inflicted. The result may be different, and more optimistic, if the case deals with the early stages of a new carbon-intensive project.

6.5 CONCLUSION

Litigants in the Global South are actively drawing on human rights law to demand more just and more ambitious climate action. Yet the traditional human rights approach to reparations, which enables victims to seek restitution from their own state, requires alteration since developing states are not fully responsible for the adverse effects of climate change. As a result, I have suggested that adjudicative bodies might address this remedy conundrum by integrating international cooperation as an obligation of conduct into their rulings. In so doing, they could instruct states to do their utmost to seek suitable resources, especially from more affluent countries, to protect those human rights threatened or encroached upon by climate change. UN human rights treaty bodies are already delineating such approach, though it could benefit from more granularity.

Global South nations can and should implement mitigation projects and policies that go hand in hand with just transition models, especially from a perspective of restorative and distributive justice. To support the latter in litigation, judges should incorporate considerations of historical responsibility into their deliberations, which would also ideally be incorporated into a specific mandate within their rulings. In light of the global, interdependent, and complex dimensions of climate change, this chapter aimed to highlight the risks that the implementation of climate change response measures, especially if designed without a human rights perspective, pose to the rights of local communities. After all, instituting a production and energy system that does not depend on fossil fuels does not necessarily preclude market abuses, which would inevitably generate negative externalities for local communities. The problem here is that any development model, including the extractivist model, can be framed as a sustainable one, without that being true in practice.

[44] See *Urgenda Foundation* v. *Netherlands*, Hof's-Gravenhage 9 oktober 2018, AB 2018, 417 m.nt. GA van der Veen, Ch.W. Backes (Staat der Nederlanden/Stichting Urgenda).

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It is also important to underscore that the adoption of mitigation measures through a court order and at the expense of citizens' budgets is not the real predicament; the challenge, instead, is the prospect of it being done in such a way that reproduces the features of the current extractivist model without any corrective actions. I have proposed in this chapter that it is the role of the judge to formulate alternatives to correct certain distortions of the principles of environmental or climate justice that, in my opinion, is skewed when global and historical dimensions are not part of the formula. If the judge does weigh these dimensions of complexity, it would be most reasonable to interpret the polluter-pays principle in light of the principle of common but differentiated responsibilities. In this way, state responsibility for the climate crisis would include its obligation to seek the necessary means to address the climate crisis without compromising its ability to guarantee the rights of its citizens.

Incorporating the obligation to cooperate with judgments in the Global North is also important, especially in future cases that may arise around extraterritorial obligations. Moreover, given that litigation in the Global South is just beginning to take off, judges from both the Global North and Global South should approach climate litigation from a more holistic perspective. In short, I believe that transferring discussions on general principles of climate law, prevalent at the international level, to the domestic jurisdictions can provide new normative tools to help materialising the Global South's justice aspirations.

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